

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Case No. 16-13116

STEPHANIE HIRSCH

Chapter 7

Debtor.

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MEMORANDUM OF LAW

Point 1

The Movant is entitled to relief from the automatic stay as requested in the within motion.

The Movant has filed a motion for relief from the automatic stay as it concerns the mortgage it holds on the real property owned by the Debtor.

Section 362 (d)(1) and (2) provide as follows:

(d) On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay:

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if:

(A) the debtor does not have any equity in such property;

(B) such property is not necessary to an effective reorganization; or

(3) Section 362 (d) is mandatory, not permissive. The Court shall grant relief from the stay for any of the reasons stated in the three subsections. **In re Elmira Litho, Inc.**, 174 Bankr. 892, 900 (Bankr. S.D.N.Y. 1994); **In re Touloumis**, 170 Bankr. 825, 827 (Bankr. S.D.N.Y. 1994); **In re Kleinman**, 156 Bankr. 131, 136 (Bankr. S.D.N.Y. 1993). Further, if any of the grounds for relief from stay apply, the Court must grant the relief from the stay.

In the case at bar, the automatic stay may be granted under Section 362 (d)(1) for cause. The

debtor has failed to make post-petition payments under the subject Note and Mortgage. As a result, the Movant lacks adequate protection in the subject property. See, **In re Kornhauser**, 184 Bankr. 425, 428 (Bankr. S.D.N.Y. 1995); **In re Kennedy**, 79 Bankr. 950, 952 (Bankr. M.D.Ga. 1987).

In conclusion, the Movant requests that its motion for relief from the bankruptcy stay as concerns the subject property described in the motion to the Court be granted in all respects.

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